

CALIFORNIA HIGH-SPEED RAIL AUTHORITY

MONTHLY MEETING

TRANSCRIPT OF PROCEEDINGS

Sacramento City Hall

915 I Street, City Council Chambers

Sacramento, California 95814

Thursday, August 1, 2013

9:12 a.m.

BRITTANY FLORES

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## A P P E A R A N C E S

## BOARD MEMBERS

Mr. Dan Richard, Chairman

Mr. Jim Hartnett, Vice-Chair

Mr. Tom Richards, Vice-Chair

Mr. Patrick Henning

Mr. Michael Rossi

Ms. Lynn Schenk

Mr. Thomas Umberg

## STAFF

Ms. Angie Reed, Interim Board Secretary

## ALSO PRESENT

Mr. Jeff Morales, CEO

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1 SACRAMENTO, CALIFORNIA, August 1, 2013

2 9:12 a.m.

3 --o0o--

4  
5  
6 CHAIRMAN RICHARD: Good morning. This  
7 meeting of the California High-Speed Rail Authority will  
8 come to order, and we'll start by asking the secretary  
9 to call the roll.

10 MS. REED: Vice-Chair Richards.

11 MR. RICHARDS: Here.

12 MS. REED: Vice-Chair Hartnett.

13 MR. HARTNETT: Here.

14 MS. REED: Mr. Umberg.

15 MR. UMBERG: Here.

16 MS. REED: Mr. Rossi.

17 MR. ROSSI: Here.

18 MS. REED: Ms. Schenk.

19 MS. SCHENK: Here.

20 MS. REED: Ms. Perez-Estolano.

21 Mr. Henning.

22 MR. HENNING: Here.

23 MS. REED: Chairman Richard.

24 CHAIRMAN RICHARD: Here.

25 I'll ask Mr. Umberg to lead us in the Pledge of

1 Allegiance.

2

3 (Whereupon the Pledge of Allegiance was recited.)

4

5 CHAIRMAN RICHARD: Thank you. Before we  
6 proceed, we have been pleased that the Speaker of the  
7 Assembly has made an appointment to this body, and  
8 that's Mr. Patrick Henning, Sr. -- I guess we have to  
9 say -- and Mr. Henning comes to us with a long and  
10 distinguished career in -- both in public service and in  
11 the private sector and, Pat, welcome.

12 Would you like to say a few words?

13 MR. HENNING: Thank you very much. I'm  
14 honored to be here.

15 CHAIRMAN RICHARD: Okay. Well, we'll beat  
16 that out of you. Thank you very much.

17 All right. We will begin with public comment and  
18 as we always do -- first, to make sure that we have --  
19 give our elected officials an opportunity to speak first  
20 and I don't -- LeeAnn, you didn't bring Supervisor  
21 Perea.

22 We'll start with LeeAnn Eager followed by Diana  
23 LaCome and followed by Paul Guerrero.

24 Good morning.

25 MS. EAGER: As I stated to Mr. Richards, I

1 wasn't in charge of Supervisor Perea today, so I don't  
2 know where he is, but I'm LeeAnn, president and CEO of  
3 the Economic Development Corporation serving Fresno  
4 County, and as I'm sure all of you know, things are  
5 hopping in Fresno. We have been working 24/7 with those  
6 businesses along that alignment, finding them places to  
7 move. It's been successful so far. We have gotten over  
8 a few of those difficult humps, and I think we have a  
9 good team in place. For those of you wondering out  
10 here, yes, we do have a contact, and we're putting  
11 together a team, and this was really something I wanted  
12 to address to those folks who are in the audience, who's  
13 outside of Fresno limits here in Madera also in Kings  
14 County, that one of the things that we have certainly  
15 learned in the last sixty days is the preparation that  
16 we did for the last three years has been invaluable for  
17 those of us who are working on this project.

18           So if you're in Madera County or in Kings County,  
19 in Kern County, I just suggest that you start preparing  
20 for this, and if I can help in any way, come into your  
21 communities, talking to you about what we have done in  
22 the last three years to prepare for this coming to our  
23 community, I'm open to do so. One of the really  
24 important things is we make sure that we met with all  
25 those folks along the alignment, and we have been

1 keeping track of sites that are available for them to  
2 move to. So on our website, we have about 150 sites  
3 that are available, so when we speak to a client, we  
4 have someplace to take them. We're putting together a  
5 team slowly but surely. I think, as you probably all  
6 know, before the last two weeks, the team has been me,  
7 but we have been adding folks, and so we're doing well.

8 I also want to thank the Authority. Rachel, I  
9 know I met with her about five hundred times but -- and  
10 ensuring that we're doing what we should be doing and  
11 also with Diana and her team. When we have an issue, we  
12 call them, and they're there on the spot making sure  
13 that we can work through that, so things are really  
14 moving along in Fresno. We look forward to the next  
15 three years.

16 CHAIRMAN RICHARD: Thank you very much, Ms.  
17 Eager. We appreciate the work you're doing there.

18 Good morning, Ms. LaCome.

19 MR. LACOME: Good morning. I'm Diana  
20 LaCome, the president of APAC. First of all, I'd like  
21 to request a copy of the sign-in sheet for the  
22 right-of-way survey and contract with the outreach event  
23 on the 24th, and I got a lot of calls from small  
24 businesses that they didn't know who the primes were, so  
25 there's no followup. They don't know who to contact, so



1 if you can put that on your website as quickly as  
2 possible or send it to us, that would be really great,  
3 so they could follow up.

4 First of all -- I mean, secondly, the RFQ, we're  
5 really happy to see those RFQs coming out, the  
6 re-issuance of those, and we hope that you take a look  
7 at those contracts and the scope of work carefully that  
8 can be subcontracted out to small businesses, and  
9 basically, that's it for today, but we're very happy  
10 with some of the things that are moving forward, just  
11 improvement on the outreach events. Thank you.

12 CHAIRMAN RICHARD: Ms. LaCome, Just, before  
13 you leave, two things, one, I did read your letter. I  
14 talked with our CEO about it. He told me that he'd ask  
15 Robert Padilla to reach out to you to talk about this.  
16 And also, I just -- I understand staff just sent me a  
17 text that what you wanted is posted on the -- you said  
18 it --

19 MS. LACOME: As long as it's quickly after  
20 the --

21 CHAIRMAN RICHARD: Right. Okay. So I think  
22 that maybe staff can help navigate where it's posted,  
23 but we believe that information that you're requesting  
24 is available.

25 MS. LACOME: It is on the website?

1                   CHAIRMAN RICHARD: That's my understanding.  
2       Staff is nodding, and so I'll ask one of the three  
3       people who are nodding over there to reach out to you.

4                   MS. LACOME: Okay. Because we need to get  
5       that information out to the small businesses right away.

6                   CHAIRMAN RICHARD: Mr. Browning, you're  
7       nodding, but I don't think you can help her.

8                   Thank you very much, Ms. LaCome.

9                   MS. LACOME: Thank you.

10                  CHAIRMAN RICHARD: Paul Guerrero followed by  
11       Nathan Whipple.

12                  MR. GUERRERO: Yeah, just very, very  
13       shortly, I wanted to advise you of another tool you can  
14       put in your tool belt and that is that under Federal  
15       Code of Regulation, you can have small business set  
16       asides. And I know, down the line, just way in the  
17       future, as you start going through towns, you're going  
18       to have a lot of little contracts going out to move  
19       people, to remodel, and it just works with the  
20       businesses that construct, and those contracts could be  
21       set aside for small businesses. So maybe staff can  
22       start looking now at adopting 49 CFR part 39 and 26.39,  
23       which allows for the set asides.

24                  The only other thing I wanted to say, in your  
25       material that came out today, you list a lot of things

1 "will be completed," and I'm wondering if there's a list  
2 of stuff that has been completed because one of  
3 contingency to receiving the Federal funds is that you  
4 have the environmental justice study. I'm assuming you  
5 have, but, you know, if you haven't, maybe you should  
6 have your staff look at that. Thank you.

7 CHAIRMAN RICHARD: Okay. We'll look into  
8 that. Thank you, Mr. Guerrero.

9 Mr. Whipple followed by Mike Wylie.

10 Good morning, sir.

11 MR. WHIPPLE: Hi. My name is Nathan Whipple  
12 I am an inventor and designer. I am CEO of Whipple  
13 Energy Systems and Technology, LLC. I have the last  
14 four years developing renewable energy generation  
15 systems with the California High-Speed Rail. I have  
16 been working the development of my designs. I am at a  
17 stage in design where interest in the system determines  
18 the outcome of the development. I am hoping to impress  
19 you with my designs. I have made a small handout  
20 detailing the system on an individual scale. I believe  
21 the system should cater to the needs of the  
22 infrastructure it supports by scaling the systems to an  
23 individual way. I hope to allow the California  
24 High-Speed Rail Authority to build a system that  
25 reflects its needs. I've included in this handout a

1 revenue and cost assessment as well as three  
2 illustrations that correspond to drawing material index.  
3 I believe this system is a viable system for the  
4 California High-Speed Rail because it embodies  
5 renewability and land conservation as well. I gave the  
6 handout to one of the secretaries. I don't if you have  
7 it in your possession. Okay. All right. I'll wrap  
8 that up. I left my contact information on the last page  
9 of the handout, and thank you very much.

10 CHAIRMAN RICHARD: Thank you very much,  
11 Mr. Whipple. We'll take a look at the material that you  
12 gave us.

13 MR. WHIPPLE: Yeah, thank you.

14 CHAIRMAN RICHARD: Mike Wylie followed by  
15 Stacey Mortensen.

16 MR. WYLIE: Good morning, Chair Richard,  
17 members of the board. I'm Mike Wylie, general manager  
18 of the Sacramento Regional Transit District. I'm here  
19 to continue my support. You have in front of you Agenda  
20 Item 4 today. We urge your approval to release the RFQ  
21 to continue to assess the improvements for the Merced to  
22 Sacramento corridor of service. In that effort, we urge  
23 you to continue to work very cooperatively with all of  
24 the communities between Merced and Sacramento. We're  
25 here to help to move this project forward and to deliver

1 service to Sacramento future high-speed rail as well as  
2 blended service in the interim until we're able to  
3 receive full high-speed rail. We work cooperatively  
4 with your staff. This is certainly consistent with the  
5 actions that you have taken previously. We urge your  
6 support for Item 4. Thank you

7 CHAIRMAN RICHARD: Thank you, Mr. Wylie.

8 Stacey Mortensen followed by Alan Scott.

9 MS. MORTENSEN: I am here today representing  
10 that 20 agency working group from Merced to Sacramento.  
11 It's a group you have used in the past to present some  
12 ideas, work out some kinks and bugs, and end up with  
13 products that go forward with the full support of the  
14 community that you're working with. I urge your support  
15 for Item 4. We'd really like to thank again, Diana, for  
16 their work with the stakeholders in advance of today so  
17 that we will be able to have this put on time, and we  
18 urge your support. Thank you.

19 CHAIRMAN RICHARD: Thank you.

20 Mr. Scott, good morning.

21 MR. SCOTT: Good morning.

22 CHAIRMAN RICHARD: Followed by Ross  
23 Browning.

24 MR. SCOTT: Good morning, board. My name is  
25 Alan Scott. I'm a founding member of Citizens for

1 California High-Speed Rail Accountability in Kings  
2 County. My first question is, "why?" And lately, there  
3 has been information both in editorials and engineering  
4 documents and expert documents all the way from the  
5 University of Oxford out of England, two documents  
6 written here. So I kind of put something together last  
7 night. So my question is, "why?" Why are we still  
8 doing this project? You have no money. You have no  
9 funding. You are in violation of the Prop 1-A,  
10 and let's agree to disagree. We should have it by the  
11 31st of this month, one way or the other on the first  
12 two issues. You have no private funding. The State is  
13 broke, 1.1 trillion. The United States is broke to a  
14 tune of 17 trillion. Too many experts who now clearly  
15 state that this project is a disaster, and that's  
16 supported by Dan Walters last Sunday in the Sacramento  
17 Bee, and the professor from Oxford University has also  
18 stated so. The big contracts for government-run  
19 contracts are at issue. The comparison was the Bay  
20 Bridge to this project. Furthermore, this project is no  
21 longer high-speed. When you look at the map of the  
22 state and the routing and everything else like that and  
23 you put the blended into the system and everything, you  
24 come up with one thing, there's no way you can do it.  
25 There's an article by a recent group that says it can't

1 be done in six hours to get from Sacramento to Los  
2 Angeles in that time. The biggest thing is this is no  
3 longer a high-speed project. It's a politically driven  
4 legacy project that can and never will be high-speed --  
5 that can't and never will be high-speed. So my question  
6 today is, "why?" Thank you.

7 CHAIRMAN RICHARD: Thank you, Mr. Scott.

8 Mr. Browning followed by Ted Hart.

9 MR. BROWNING: Good morning, Mr. Chairman,  
10 and lady and gentlemen of the board and the newest board  
11 member, welcome. My name is Ross Browning. I'd like to  
12 speak to you today and address my comments to board  
13 Agenda Item No. 7, which is a proposal to adopt the  
14 policy and procedures for contingency management, a  
15 overage fee, a built-in overage. I would ask the board  
16 to seriously consider not adopting this policy in the  
17 amounts that -- I should mentioned in the document here,  
18 you're asking your staff -- you're giving your staff the  
19 ability to pro -- to prove a contingency fee for an  
20 overage on a contract when you're using, supposedly, the  
21 most experienced -- in his words -- the most experienced  
22 contractor on CP-1, the contractor that has a documented  
23 history of, at minimum, of forty percent out of all his  
24 projects. And it just seems like you're setting this  
25 thing up in the middle -- or right at the beginning --

1 saying, "We'll just give you thirty percent." So I  
2 would ask the board to seriously consider not voting for  
3 this project at this time. Thank you very much

4 CHAIRMAN RICHARD: Thank you, Mr. Browning,  
5 and let me assure you, we're going to have a  
6 conversation about this on Item 7 to address those  
7 concerns.

8 Mr. Hart, good morning.

9 MR. HART: Good morning, Chairman Richard,  
10 and the board. My name is Ted Hart. I'm one of a group  
11 of about twenty people in the state who have been  
12 following this entire project for the last three to five  
13 years. I have sixty years in the construction industry,  
14 and we have many other experts on our side look at this.  
15 We look at it in hope that we might be of some help to  
16 the board, because we're independent. We're not owing  
17 to anyone, and we're objective at what we're looking at.  
18 I know you have a busy agenda, so I'm not going to take  
19 up much of your time this morning.

20 A short review of what I would look at right now  
21 is speed, safety, and assumption. All of these are  
22 controlled by one thing, the two hour and forty minute  
23 mandatory requirement to run from LA to San Francisco.  
24 Unfortunately, the previous staff have left you with an  
25 impossible combination of circumstances and questionable



1     assumptions. In order to meet this requirement of Prop  
2     1-A, it will require a running of large segments at 220  
3     miles per hour, which is at red line, and I emphasize  
4     the red line. No high-speed trains anywhere in the  
5     world are operating at sustained speeds of 220 miles per  
6     hour. Although, you may be able to get up a single,  
7     perfect run in the allotted time, but it will be almost  
8     impossible to accomplish this on a day-to-day basis.  
9     Your spokesperson, Lisa Marie Aly, says, quote, "We will  
10    never be going at 150 to 200 miles per hour in urban  
11    areas." Well, how will this work in your timeframes?

12             Shifting over to a different subject, you are  
13    considering passing this resolution, which would give  
14    staff authority to run up to thirty percent contingency.  
15    Given the size of the project and it's rocky history to  
16    date, it's premature for the board to remove themselves  
17    from their oversight role. These kind of projects have  
18    a history of large loss overage, and it's your  
19    responsibility to protect the people of California with  
20    your oversight and experience. I urge you to retain  
21    your power to be able to look at this carefully. Thank  
22    you.

23             CHAIRMAN RICHARD: Thank you, Mr. Hart. I  
24    have one last speaker card, not seeing anymore and that  
25    is from Michael Liikala.

1           Good morning, Mr. Liikala.

2           MR. LIIKALA: Thank you, Mr. Chairman. I  
3 appreciate the time. I just wanted to provide a little  
4 clarification on something that has been in the media.  
5 There's been a lot of confusion and misstatements about  
6 the tragic accident in Spain, the train accident. My  
7 firm, we represent some of the largest construction and  
8 engineering firms in Spain, and I thought we'd clarify  
9 what, in fact, occurred and particularly as it relates  
10 to high-speed rail systems.

11           While most of the media has reported it as a  
12 high-speed train accident, it was, in fact, a train  
13 traveling at high speed. It was not a high-speed rail  
14 train or operating a high-speed rail infrastructure.  
15 The high-speed rail system and infrastructure in Spain,  
16 like most places around the world, provides technology  
17 that automatically prohibits signalling errors and  
18 errors from the conductor, errors within the system from  
19 jeopardizing the safety of the passengers and also  
20 incorporates automatic breaking. In fact, had that  
21 segment of the network been upgraded to a -- as an  
22 advanced operating system, as the rest of the Spanish  
23 high-speed rail network, the accident would never have  
24 occurred. The Spanish system is the largest system in  
25 the world, with the exception of China, and continues to

1 have no fatalities caused by the infrastructure or  
2 operation. So while many in the media are contending  
3 that this type of accident is one of the risks of  
4 high-speed rail, in fact, it is one of the risks of not  
5 switching to the highly advanced systems of a high-speed  
6 rail network. I hope that you and the board and the  
7 other folks in industry here will help educate the media  
8 and the public of this. Thank you.

9 CHAIRMAN RICHARD: Thank you, Mr. Liikala.

10 Okay. Ms. Schenk, I understand from Mr. Morales  
11 that you had wanted to raise some questions about this  
12 last subject that was just posed before us.

13 MS. SCHENK: Yeah, but I didn't --

14 CHAIRMAN RICHARD: Okay. I just wanted --

15 MS. SCHENK: -- give them an opportunity.

16 CHAIRMAN RICHARD: That was the last  
17 comment.

18 MS. SCHENK: Oh, that was the last comment.  
19 It was. Okay.

20 CHAIRMAN RICHARD: That was the last one.  
21 That is why I was referring to you.

22 MS. SCHENK: Oh, okay. Well, thank you very  
23 much. And the speaker emphasized what I had wanted to  
24 talk about was that this is a traditional train that was  
25 going very fast rather than our high-speed rail project,

1 but I think it's incumbent upon us and the High-Speed  
2 Rail Authority and staff to make sure that that gets  
3 out, because I suspect that every one of us up here has  
4 been approached by elected officials or former elected  
5 officials or just people that we know saying, "Oh, my  
6 gosh. Look at this, and you're involved with high-speed  
7 rail, and what does this mean?" We need to do a very  
8 good job of telling the story. And through our  
9 communications folks, frankly, I think we missed the  
10 train on that a little bit. And I think we need to go  
11 back and still talk about it, because it's still very  
12 much a question in many people's minds. And just  
13 yesterday, I spoke with a very high level government  
14 official, who is not that conversant with high-speed  
15 rail, and brought it up. So there still are -- there's  
16 still work to be done on our part, and I think we need  
17 to do it aggressively.

18 CHAIRMAN RICHARD: Thank you. And I  
19 appreciate those comments. I think they're well stated,  
20 and I know from conversations that I have had with  
21 Mr. Morales and that he's had with staff that, you know,  
22 our staff has been actively involved in making sure that  
23 we understand what happened there, that any lessons that  
24 we should learn from that are learned. But I agree with  
25 your comment and I appreciate the way Mr. Liikala stated

1 it, which was that if anything, it shows the risk of not  
2 moving to a modern, modernized high-speed rail system.  
3 I know that Senator Feinstein after the crash, a  
4 terrible crash in LA, has been pushing for positive  
5 train control, and there's been a lot of resistance to  
6 getting that done on the timetable, but we are building  
7 a system that has positive train control. So as you  
8 said, these are things that we need to get out.

9 Mr. Morales, did you want to add something?

10 MR. MORALES: Certainly. Thank you, Mr.  
11 Chairman, and just to follow, the Spanish incident is a  
12 tragedy, and it is incumbent upon us to learn whatever  
13 we can from it. And, you know, some things are relevant  
14 and some things are not, but certainly, we are looking  
15 at it. We have been looking aggressively. We have the  
16 ability, as more is learned about it, to understand what  
17 happened and how we should apply any lessons through us  
18 through direct interactions that we can have with the  
19 Spanish Government and Spanish operators through the  
20 UIC, the association of operators through the Federal  
21 Railroad Administration through the transportation  
22 research here in the US and other mechanisms. We have  
23 already done some preliminary looks through our safety  
24 and security committee, which I chair, to look at,  
25 again, what things may be coming out of this and how

1 they might be relevant. It's already been pointed out,  
2 again, this was not contrary to numerous reports as part  
3 of their high-speed network, but again, we will look to  
4 see what's relevant.

5 Two things that have certainly been discussed in  
6 the public arena that I just want to talk about quickly.  
7 One is the apparent role that speed played and the fact  
8 that the European version of positive train control was  
9 not in place at this segment of the system. That is  
10 required under Federal regulation as of 2015 to be in  
11 place here in the US. It is part of our design system  
12 and will be in place on every element of our system  
13 including the Caltrain corridor, in fact, that's the  
14 first piece of work that they'll be doing at the  
15 Caltrain corridor is putting that into place. And then  
16 secondly, in reports about what role cellphone  
17 communications have played in this based on press  
18 reports. Federal regs here in the US already prohibit  
19 that from happening. As we move forward to operation,  
20 we will not only, obviously, comply with any and all  
21 Federal regulations but will ensure that we have  
22 operating practices that are at the very highest levels  
23 of safety. So again, we will certainly look for what's  
24 relevant, what's not, and make sure that we're  
25 incorporating everything we can from this or any other

1 example.

2 CHAIRMAN RICHARD: Thank you, Mr. Morales.

3 Okay. Now, I feel that was very important  
4 commentary.

5 We'll move now through the agenda, and,  
6 Mr. Morales, did we decide how we wanted to handle the  
7 three proposals to issue RFQs -- oh, I'm sorry.

8 MR. HARTNETT: Does the Chair move the  
9 approval of the minutes of the meeting as noted?

10 MR. ROSSI: Second.

11 CHAIRMAN RICHARD: All right. Before the  
12 secretary calls the roll, I just want to let Mr. Henning  
13 know that it's a matter of routine that I manage to skip  
14 over the minutes every month, and so my colleagues  
15 always get a kick out of that.

16 Secretary, please call the roll.

17 MS. REED: Vice-Chair Richards.

18 MR. RICHARDS: Yes.

19 MS. REED: Vice-Chair Hartnett.

20 MR. HARTNETT: Yes.

21 MS. REED: Mr. Umberg.

22 MR. UMBERG: Aye.

23 MS. REED: Mr. Rossi.

24 MR. ROSSI: Aye.

25 MS. REED: Ms. Schenk.

1 MS. SCHENK: Aye.

2 MS. REED: Mr. Henning.

3 MR. HENNING: Nod, okay.

4 MS. REED: Chairman Richard.

5 CHAIRMAN RICHARD: Are we doing the minutes  
6 now? Yes. Okay. Thank you. All right.

7 Now, Mr. Morales, on Items 2, 3, and 4, do we  
8 want to handle those as one combined presentation?

9 MR. MORALES: Items 2, 3, 4 are very similar  
10 items, and they're followups on previous actions that  
11 the board has taken regarding extensions of contracts  
12 that are consistent with the policy and direction set by  
13 the board previously. So what we have suggested is that  
14 we can provide -- answer any questions on them, provide  
15 them a brief update, but if the board desires, you can  
16 vote on them -- 2, 3, 4 -- recognizing that they're  
17 separate items in order to expedite.

18 CHAIRMAN RICHARD: Pleasure of the board  
19 members?

20 MR. ROSSI: That's fine with me.

21 MR. RICHARDS: I think so.

22 CHAIRMAN RICHARD: So question --

23 MR. ROSSI: I'm willing to move all three.

24 MR. RICHARDS: Second.

25 CHAIRMAN RICHARD: They have been moved and



1       seconded. Moved by Mr. Rossi, seconded by Vice-Chair  
2       Richards. Any other questions on this?

3               Will the secretary please call the roll, and this  
4       is for Items 2, 3, and 4.

5               MS. REED: Vice-Chair Richards.

6               MR. RICHARDS: Yes.

7               MS. REED: Vice-Chair Hartnett.

8               MR. HARTNETT: Yes.

9               MS. REED: Mr. Umberg.

10              MR. UMBERG: Aye.

11              MS. REED: Mr. Rossi.

12              MR. ROSSI: Yes.

13              MS. REED: Ms. Schenk.

14              MS. SCHENK: Yes.

15              MS. REED: Mr. Henning.

16              MR. HENNING: Yes.

17              MS. REED: Chairman Richard.

18              CHAIRMAN RICHARD: Yes.

19              Okay. Thank you. Next is Item 5, the proposal  
20       to amend the Nossaman contract for legal services.

21              Ms. Greene-Ross, Good morning.

22              MS. GREENE-ROSS: Good morning, Mr. Chair,  
23       and members of the board. This Item No. 5 is a request  
24       for delegated authority for the CEO to amend the  
25       existing legal service contract with Nossaman Law Firm

1 for an addition two years and an additional 8.6 million.  
2 The current amount of 5.9 million is expected to be  
3 depleted by the end of this month. That would bring the  
4 total amount of the contract to 14.5. As you may not be  
5 aware, there are two requirements for legal service  
6 contracts that the State has. One is that you --

7 MS. SCHENK: I'm sorry. Could you put the  
8 mic closer?

9 MS. GREENE-ROSS: Sure.

10 CHAIRMAN RICHARD: Yeah, and what I have  
11 noticed is we're get a lot of echo, so why don't you  
12 speak a little more slowly. I was going to ask all the  
13 other speakers to do that because it's -- there's  
14 something with the AV system today but thanks.

15 MS. GREENE-ROSS: Certainly. The two  
16 requirements that we have met, the State requires, is  
17 the authorization from the Attorney General's office for  
18 the use of outside counsel and that projects are not  
19 competitively bid. So this is an amendment to the  
20 existing contract, and as you may or may not be aware,  
21 Nossaman is providing an immense amount of the legal  
22 support to our program and this will continue that work,  
23 ensuring all necessary State and environment permits are  
24 obtained, legal support and support our grant and our  
25 Prop 1-A funds, assistance with the service

1 transportation jurisdictional issues, the assistance  
2 with the negotiations with the freight railroads,  
3 application for compliance with FRA regulatory  
4 requirements, legal assistance with the procurement  
5 process for all five design build construction packages  
6 in the Central Valley, including the Request for  
7 Qualification proposal, contract drafting and the like.  
8 And in this last state budget, we were able to obtain  
9 budgetary authority for two additional staff counsel  
10 positions, and so this would also be training and  
11 guidance, eventually transition in the new counsel  
12 that -- get up-to-speed and work on similar issues and  
13 eventually standard issues in house.

14 CHAIRMAN RICHARD: Thank you. Questions?

15 Ms. Schenk.

16 MS. SCHENK: Thank you. A couple of  
17 questions. Who reviews the bills as they come in? Is  
18 that the AG's offices and Mr. Fellenz, or is it just  
19 Mr. Fellenz?

20 MS. GREENE-ROSS: Mr. Fellenz, myself  
21 reviews the contract. The Attorney General also submits  
22 the bill, and we review that bill.

23 MS. SCHENK: And is the contract on billable  
24 hours or is it a project basis or how do they bill us?

25 MS. GREENE-ROSS: It's a traditional billing

1 and -- that they do try to categorize it by the task so  
2 that it's like what area they have worked on.

3 MS. SCHENK: And do you have some idea of  
4 what the average hourly rate is?

5 MS. GREENE-ROSS: Not off the top of my  
6 head. I know from other contracts that I'm involved,  
7 we're often able to get a blended rate, where we take  
8 the highest partner and the lowest partner and they'll  
9 often give us a discount for -- because it's a state  
10 contract but some, as you may know from private  
11 practice, you know, experienced, competitive law firms  
12 billable hours can be \$800 dollars an hour. Some can be  
13 as low as \$350. We try to negotiate for a blended rate.

14 MS. SCHENK: And I heard the word  
15 "discount." I like that.

16 MS. GREEN-ROSS: Some firms --

17 MS. SCHENK: Yeah, I know "some firms," I'm  
18 talking about this contract. Are we getting any kind of  
19 a discount on this contract?

20 MS. GREENE-ROSS: I don't know that off the  
21 top of my head. I can find out.

22 MS. SCHENK: Okay. And, you know, the  
23 Nossaman Firm is a wonderful firm, and I have nothing  
24 but the highest regard, but I would like to broaden my  
25 comment, Mr. Chairman, to apply to all legal fees as we

1 incur them. One, I'd like to know what the rates are.  
2 I'd like to know if we are getting a discount. I'd like  
3 to know how many at 800 an hour and how much at, you  
4 know, 200. In other words, what are we paying for and  
5 how many hours, and I'd like to suggest that now that we  
6 have such a fine Audit Committee that on some regular  
7 basis, these, like our other bills, be reviewed  
8 carefully by the Audit Committee. I'm sure our counsel  
9 does a terrific job, but you get, sort of, caught up in  
10 it, and it's always good to have someone else take a  
11 look.

12 MR. ROSSI: We do review it.

13 MS. SCHENK: You do review the legal bills.  
14 Great. Okay. Thank you.

15 CHAIRMAN RICHARD: But notwithstanding that  
16 the Audit Committee does review the bills, I think Ms.  
17 Schenk's request was that she wanted to get some direct  
18 information about the contacts and so forth. So I'd ask  
19 staff to bring that to her and any other member who'd  
20 like to see it.

21 Mr. Umberg.

22 MR. UMBERG: Thank you.

23 CHAIRMAN RICHARD: I know we have a number  
24 of practicing lawyers on the board, so I know when we  
25 start talking about bills, people break out in hives.

1           MR. UMBERG: The recommendation makes  
2 references to some small businesses subcontract, do you  
3 include subcontracts?

4           MS. GREENE-ROSS: They're in the middle of  
5 being negotiated with the general counsel, and I met  
6 with one of the firms at Nossaman that brought to us  
7 that would be doing environmental work, but because it's  
8 not executed yet, I'm not -- you know, I'm not able to  
9 disclose it yet.

10          MR. UMBERG: Okay. There's not somebody  
11 that's already working with them, a subcontract that's  
12 already working with them?

13          MS. GREENE-ROSS: No, in fact, you know, to  
14 find qualifying firms, there's only so many that are  
15 listed on the small business registry, Department of  
16 General Services, and then they would have to be able to  
17 qualify to do the work that we need. So it -- there's a  
18 couple of firms that could fit.

19          MR. UMBERG: This is just a general comment.  
20 I know that virtually every one of the contracts that we  
21 award has subcontractors in it, and I think it would be  
22 useful for us to know who those subcontractors are, if  
23 there's some sort of threshold, what that might be, but  
24 anything above a certain threshold, I think it's  
25 important for us to know for a variety of reasons. If

1 we could do that. So for example, in this contract, can  
2 they designate who the contractors are, we could know  
3 that. That would be good.

4 CHAIRMAN RICHARD: Okay. Mr. Morales.

5 MR. MORALES: Just on that point, I just  
6 wanted to reinforce, make sure the board understood, we  
7 are applying that small business goal to all of our  
8 contracts as we go forth in order to make sure that's  
9 complied with. I just want to go over a few quick  
10 points. One, our primary legal representation is  
11 through the Attorney General's office, and, in fact,  
12 before we go out and secure any help from the private  
13 sector, we go through the Attorney General's office and  
14 ensure -- we have to ensure -- that they cannot offer  
15 what we need. And the reason we have this level of  
16 outside help is that because of a specialized nature of  
17 what we're doing, in many cases the State just typically  
18 just doesn't deal with many of the issues that we're  
19 having to deal with, it's always on a task order basis.  
20 It's not a retainer basis so -- and chief counsel is the  
21 manager of that -- these contacts to direct what sort of  
22 assistance we need, when we need it. And so I just  
23 wanted to reinforce those points.

24 CHAIRMAN RICHARD: Great. Okay.

25 Mr. Richards.

1           MR. RICHARDS: Just a quick comment, just to  
2 make sure, a clarification as I understand it, Jeff,  
3 that this is a task driven contract, and the number that  
4 we're looking at is really a not-to-exceed number, in  
5 fact, could be less than that number but cannot exceed  
6 it based upon the tasks that are asked of the  
7 contractor; is that correct?

8           MR. MORALES: That is correct, and, in fact,  
9 the previous trend has been that we have not spent up to  
10 the levels authorized.

11          MR. RICHARDS: Yeah, I just wanted to  
12 clarify.

13          CHAIRMAN RICHARD: Spoken as a consumer as  
14 opposed to a provider.

15          Okay. Motion on this?

16          MR. ROSSI: So moved.

17          MR. HARTNETT: Second.

18          CHAIRMAN RICHARD: Okay. Yeah, was it Mike  
19 who moved? Yeah. Moved by Mr. Rossi, seconded by  
20 Vice-Chair Hartnett.

21          Secretary, please call the roll.

22          MS. REED: Vice-Chair Richards.

23          MR. RICHARDS: Yes.

24          MS. REED: Vice-Chair Hartnett.

25          MR. HARTNETT: Yes.



1 MS. REED: Mr. Umberg.

2 MR. UMBERG: Aye.

3 MS. REED: Mr. Rossi.

4 MR. ROSSI: Yes.

5 MS. REED: Ms. Schenk.

6 MS. SCHENK: Yes.

7 MS. REED: Mr. Henning.

8 MR. HENNING: Yes.

9 MS. REED: Chairman Richard.

10 CHAIRMAN RICHARD: Yes.

11 MS. GREENE-ROSS: Thank you.

12 CHAIRMAN RICHARD: Thank you.

13 Okay. All right. Item 6, the RFQ on right of  
14 way and engineering survey. I'll ask Mr. Mothers to  
15 introduce this.

16 MR. MORALES: Mr. Chairman, this is really a  
17 technical, cleanup provision here. The board has  
18 previously authorized staff to secure right of way  
19 surveying services through an RFP process. As we  
20 proceeded with that, we had strong recommendations from  
21 small business advisory committee and others that if we  
22 were to pull out the survey work, that could be very  
23 much tailored towards small business participation. We  
24 have done that along with the budget that was authorized  
25 by the board previously. Survey work, though, falls

1 under a different code, Government Code, and is required  
2 to be procured on a qualifications basis not a price  
3 basis. So although the board had authorized all of  
4 these services through our RFP, we wanted to come back  
5 and make sure that there was no question of the  
6 authority of the contracting mechanism to secure these  
7 services. So this is really just reconciling the method  
8 of how we're procuring these services with the authority  
9 as was previously recognized. It's not a change in the  
10 scope of services. It's not a change of budget. It's  
11 simply methodology.

12 CHAIRMAN RICHARD: So this is just to make  
13 sure that we're within the legal parameters for the  
14 issuance of this type --

15 MR. MORALES: Correct. We didn't want to  
16 have any question about the authority to secure these  
17 services.

18 CHAIRMAN RICHARD: All right. Questions of  
19 members?

20 MR. HARTNETT: Move adoption of the item as  
21 recommended.

22 CHAIRMAN RICHARD: All right.

23 MR. RICHARDS: Second.

24 CHAIRMAN RICHARD: Moved by Vice-Chair  
25 Hartnett, seconded by Vice-Chair Richards.

1           Secretary, please call the roll.

2           MS. REED: Vice-Chair Richards.

3           MR. RICHARDS: Yes.

4           MS. REED: Vice-Chair Hartnett.

5           MR. HARTNETT: Yes.

6           MS. REED: Mr. Umberg.

7           MR. UMBERG: Yes.

8           MS. REED: Mr. Rossi.

9           MR. ROSSI: Aye.

10          MS. REED: Ms. Schenk.

11          MS. SCHENK: Yes.

12          MS. REED: Mr. Henning.

13          MR. HENNING: Yes.

14          MS. REED: Chairman Richard.

15          CHAIRMAN RICHARD: Yes. Thank you.

16          Okay. Our last item on the public agenda is the  
17          proposal to adopt a policy and procedures for  
18          contingency management construction design build and  
19          design build operate contracts.

20          John, Good morning.

21          MR. TAPPING: Good morning.

22          MR. MORALES: Chair, let me just say, this  
23          is really -- this is part of our transition, the  
24          authority's transition, to being a construction agency.  
25          Other departments have either statutory or policy or

1 regulatory guidelines on contingency for construction  
2 contracts. Because the Authority hasn't issued  
3 construction contracts before, we need to establish such  
4 procedures, so that is what this is about, and I'll have  
5 John describe it in detail.

6 CHAIRMAN RICHARD: And at some point, either  
7 in John's presentation or in your followup, I do think  
8 some of the questions that were raised by members of the  
9 public this morning should be addressed.

10 MR. MORALES: Yes, absolutely.

11 CHAIRMAN RICHARD: Okay. Good morning.

12 MR. TAPPING: Good morning. It's a pleasure  
13 to be before you again. I am here to present agenda  
14 item on a proposal for procedures pertaining to the  
15 establishment and management of contingency on  
16 construction design build and construction design build  
17 operate contracts.

18 As the Authority enters into this great  
19 construction phase of the high-speed rail program, it is  
20 appropriate to establish a policy contingency  
21 development and management. Contingency is typically  
22 defined as an estimated dollar amount to allow for  
23 items, conditions, or events for which the occurrence of  
24 effect are uncertain, which experience shows will likely  
25 result in the advocate -- a project contingency is

1 typically included to cover the cost of work deemed  
2 likely necessary in order to accomplish the work within  
3 scope. It should be noted that both the program -- at  
4 both the program and project level, contingencies are  
5 contemplated and provided in current Authority estimates  
6 and the current business plan. There are three  
7 general --

8 MR. ROSSI: Might I, Mr. Chair?

9 CHAIRMAN RICHARD: Yeah, Mr. Rossi.

10 MR. ROSSI: Just so we're clear on that  
11 point, our budget and our business plan already has a  
12 series of contingencies in it for construction, so what  
13 we're now talking about is a policy which will put in  
14 place a -- what I would call -- a sophisticated process  
15 for ascertaining the range of that contingency that will  
16 actually be used from the perspective of a model and  
17 that -- that is -- the things that you mentioned in this  
18 particular deal with that issues. Not that there aren't  
19 contingencies, but that whatever contingencies we come  
20 through with this policy will be added on the  
21 contingencies we already have and that you will add the  
22 additional dimension of -- you're running on Monte  
23 Carlos, which will then also deal with the probability  
24 aspects of the these things, which refer to the  
25 exercise. That's -- one of the public mentioned phase

1 29. That's what we're doing here, right?

2 MR. TAPPING: That's exactly right. There's  
3 currently contingency estimates, both at the programming  
4 project level. What the risk management program is  
5 proposing is that -- to do really a state of practice  
6 analysis and developing a risk based approach to refine  
7 those contingencies. And it -- it's without getting too  
8 detailed, we're looking at doing a bottoms up approach  
9 where we'll identify the potential risk for the project  
10 as we move into CP-1. We look at the specific risk on  
11 that project, and we also look at some of the research  
12 in terms of response and do a tops down. And so through  
13 that process, we develop, kind of, a risk envelope  
14 methodology to focus in on what is appropriate risk  
15 contingency for the project.

16 There's three general methods that public  
17 agencies use in developing contingency amounts. One is  
18 just expert judgment based on -- that's made by a  
19 project management and staff, typically, small projects  
20 with little risk. Agencies that have been in place a  
21 long time and have essentially more bread and butter  
22 type projects have guidelines with a preestablished  
23 percentage based on historic fashion, and in the memo, I  
24 listed some of those. Again, but we're going beyond  
25 that in doing this approach -- or the proposed approach.

1           And the last risk based computer simulation, as  
2   you mentioned, using Monte Carlo analysis that includes  
3   probable events and the impacts resulting from that, and  
4   what that's really powerful in that it results in a  
5   range of expected outcomes, and you can get confidence  
6   level associated with it.

7           So large, complex projects without adequate  
8   precedent, typically require specific study, and I think  
9   as we enter into this program, the risk based approach  
10   is a really prudent mechanism, methodology with setting  
11   a project contingency. The Monte Carlo approach is  
12   widely accepted by the US Government, accountability  
13   office, the Bureau of State Audit, and Federal Railroad  
14   Administration are two risk management plans  
15   incorporated, these type of approaches in response to  
16   some of our recommendations.

17           Three general advantages of the approach. The  
18   overall recommendation is made with readiness to a  
19   specific project context and contractual arrangement.  
20   So it takes into account the contractual term sheet of  
21   the contract and other things. Transparency. As you  
22   generate the Monte Carlo approach, you can see a range  
23   of expected outcomes and, you know, need to go through  
24   risks that result from that. So all stakeholders  
25   know -- are aware of the risks and uncertainties and how

1   they contribute to an approach like this, and as I said,  
2   establish a level of confidence in the range of outcomes  
3   that you have.

4           So a little bit about managing a contingency,  
5   we -- we have developed, over the course of a year or  
6   six months, extensive checks and controls in terms of  
7   construction management, and we have set in place a  
8   construction management manual and also procedure by  
9   which we would have a configuration change committee at  
10   a very high level within the Authority. So we have  
11   established internal checks and balances in a process by  
12   which we would manage contingency. So I would -- so in  
13   closing, basically, the recommendation here is that the  
14   Authority adopt the risk informed approach and determine  
15   the appropriate levels of contingency. That's number  
16   one. Number two, mandate that state provide to the  
17   Audit and Finance Subcommittee for approval as risk  
18   inform contingency assessment report and recommend a  
19   contingency estimate for every awarded construction  
20   package started with CP-1, and lastly, with respect to  
21   managing the contingency, authorize the CEO to manage  
22   the Audit and Finance Committee's approved contract  
23   contingency balance with required reporting to the Audit  
24   and Finance Committee at regular meetings or upon  
25   request and for the Audit and Finance Committee to



1 provide reoccurring notification to the board on  
2 trending information regarding contingency.

3 With respect -- that concludes my presentation.  
4 I can take questions.

5 CHAIRMAN RICHARD: Questions for  
6 Mr. Tapping? I have a comment but questions from  
7 members?

8 Mr. Rossi.

9 MR. ROSSI: A couple of questions. John, if  
10 you look at the last page, the last unnumbered page,  
11 where the recommendation is, John.

12 MR. TAPPING: Yes, I'm there

13 CHAIRMAN RICHARD: The resolution.

14 MR. ROSSI: The recommendation is that when  
15 you talk about these, you know, one of the interesting  
16 things is that as you do this more sophisticated  
17 analysis, it is certainly conceivable that you can come  
18 up with a number higher than the one. It would seem to  
19 me that if that occurs, that has some impact. It can't  
20 go to the Audit and Finance Committee, number one. I  
21 think it's unlikely, given the contingency, but if that  
22 occurs, I think it has to come back to this board.

23 Second thing is that as I look at number two, in  
24 order for the Audit and Finance Committee to approve  
25 that, we would have to have all of the data, right, all

1 of the charts, all of the Monte Carlo simulations, and  
2 in a timely fashion. Okay. And then as you move  
3 through time, you need to have all of those rerun to  
4 ensure that as things change, that we're staying on top  
5 of that, right?

6 MR. TAPPING: Absolutely. I think certainly  
7 the report that we will provide to the Audit and Finance  
8 Subcommittee will be detailed. It will have details  
9 about probability impact of all of the uncertainties and  
10 the results that are generated from that, and also it is  
11 the risk management plan provides for a process. For  
12 example, if we are in the CP-1 contract and we have  
13 identified a risk with uncertainty and we perform some  
14 mitigations but we still may have to draw from the  
15 contingency. There would be -- the risk variance  
16 changes, you know, something goes from a "risk" to an  
17 allocated cost or an incurred cost, and so yes, it is a  
18 quarterly process that we would go through.

19 MR. ROSSI: Thank you.

20 CHAIRMAN RICHARD: One second. Yeah, I was  
21 just asking Mr. Morales if we could clarify for -- in  
22 terms of the overall contingency level, where is that  
23 going to be set and how is that going to be set?

24 MR. MORALES: That follows on some of the  
25 questions and points that Mr. Rossi made. We have,

1 within the overall programmatic estimate that was in the  
2 business plan for the project, we have contingencies  
3 applied to each element of the construction broken down  
4 by segment. That was reviewed by the GAO, among others,  
5 who are consistent with best practices and  
6 reasonableness. Those contingencies are just on a  
7 percentage basis based on industry history and trends,  
8 what level of the contingency should be applied at what  
9 stage of the project development. There are different  
10 levels assigned for different things. The overall  
11 contingency is going to cost us, and I would defer to  
12 Mr. Rossi, who retains numbers better than I do, but I  
13 believe that it's 18 to 22 percent is the overall number  
14 within the \$68 billion number. What this does --

15 CHAIRMAN RICHARD: Within that number, not  
16 on top.

17 MR. MORALES: It is within that number, yes,  
18 yeah, right. The contingency is part of that number.

19 What we are doing now is asking the board to now  
20 take it down to the application of that contingency on a  
21 contract specific basis as we go forward with each  
22 contract, and it's a much more precise way of  
23 determining what the risks are and what the contingency,  
24 there, should be on each one of those contracts. So we  
25 will move from what was a percentage based approach to

1 now a risk based approach through a Monte Carlo  
2 simulation of looking at specific components within the  
3 contract and determining what the risks of those factors  
4 coming into play are and what the value of that is.

5 It's very important to note a few things. One,  
6 this contingency, and again, this is the same for all  
7 agencies who do construction projects. It's controlled  
8 by the Authority not by a particular contractor. So the  
9 contingency can only be used by the Authority upon, in  
10 our basis, based on what we're proposing, based on the  
11 review and approval of the Finance and Audit Committee  
12 as its reported to the full board when we do that. So  
13 there's ongoing oversight by the board of that, and it  
14 is for, typically, the types of things that we would  
15 look at. Our contingencies are third party factors that  
16 are external factors that could be anticipated in a  
17 contract prior to its execution or develop over the  
18 course of it. It is not a contractor coming in saying,  
19 "We missed something." It is things like soil  
20 conditions. For instance, if they were not available to  
21 the bidder at the time and we find that we have  
22 differing soil conditions that different activities,  
23 that would fall under contingency.

24 CHAIRMAN RICHARD: Okay. Or the other  
25 example that I think of is utility relocation is where

1 maps have not been updated and they open up a trench and  
2 find that there's not just a cable but there's a gas  
3 pipe under it. Something like that.

4 Yeah, Mr. Richards.

5 MR. RICHARDS: Thank you, Jeff. I think  
6 your explanation and your clarification, Mr. Chairman,  
7 are appropriate. The important thing to ensure and  
8 understand is that this is all within the budget that we  
9 have defined in the 2012 business plan. This, in the  
10 private sector, we would call the owner's contingency.  
11 This is separate from a contractor's contingency. I'm  
12 sure within the number that was bid in CP-1, they have  
13 got construction contingency totally separate to this,  
14 but this really does involve those things which were --  
15 which will potentially, if not have been able to, be  
16 defined at the outset and give us, what I believe  
17 strongly, is far more progressive way of identifying and  
18 managing contingency than using a traditional percentage  
19 that is often done on projects of far less scope and  
20 complexity and that we're dealing with here. So I  
21 strongly support the concept, and as discussed by  
22 Director Rossi and both you and the Chair, that this is  
23 both appropriate and in the best interest of the tax  
24 payers of California.

25 CHAIRMAN RICHARD: Thank you.

1           MR. MORALES: Mr. Chair, just one other  
2 point to reemphasize, again, we're having this  
3 discussion, and it's an important one, and we have to  
4 get approval for this because we have not had  
5 construction contracts before. Other -- every other  
6 agency that does construction has long established  
7 policies, rules, procedures, and in some cases, even  
8 laws specifically providing what contingencies are, and  
9 the memo provides some examples that Cal trans, for  
10 instance, and the Transportation Commission have 75  
11 years of practice established that are just applied as a  
12 matter of routine to every contract as they go forward.  
13 This would set that same sort of policy in place for  
14 this board, for this Authority so that we can manage the  
15 construction programs as we go forward. It's not -- it  
16 really has nothing to do with any particular contract as  
17 far as this board. It's a policy and procedure.

18           CHAIRMAN RICHARD: All right. So I was just  
19 going to make three points and segueing off of your last  
20 point because I -- we -- this is a project that is under  
21 intense public scrutiny, as it should be, for a project  
22 of this magnitude. So I know especially as it was  
23 reflected in some of the comments from public, members  
24 of the project, and those particular members of the  
25 public, they create attention to this project and so

1    they raise questions about -- but let's just talk  
2    briefly about what this is not. This is not, as our CEO  
3    just said, related to any specific contact nor does it  
4    indicate that somehow we believe that the contracted for  
5    amounts in that contract are not going to be the ones  
6    that we're going to be managing to. We certainly do  
7    believe that, but there are certain things that are  
8    inherent in the contracting process, where people make  
9    guesses as to things that can't be known until you  
10   actually get in there. So a contingency is a standard  
11   practice and is prudent, and we're developing this as a  
12   generic model. That's point number one.

13            Point number two, as it's been emphasized by  
14   Mr. Rossi and Mr. Tapping, this is a very sophisticated  
15   approach. This is not a simple setting aside of a  
16   percentage, operating with a hope and a prayer, but it's  
17   an extension of very sophisticated risk management tools  
18   that we are applying to this project, and we're pleased  
19   to have Mr. Tapping who has demonstrated that he has  
20   tremendous skills and capabilities in this area. So  
21   we're taking a very sophisticated approach to risk  
22   management in general and bringing that to this question  
23   of what the appropriate contingency levels are.

24            The third point that came up, which was an  
25   appropriate point to be raised, was the question of

1 whether or not this constituted some type of hands off  
2 delegation to staff, and the way that this memo is  
3 written and the way that that resolution is structured,  
4 in fact, board governance attaches to this process and  
5 remains attached to it in, I think, a very appropriate  
6 way. We do have a Finance and Audit Committee. This  
7 requires that the Finance and Audit Committee be fully  
8 informed about any applications of the contingency, and  
9 one of the things that I talked to the CEO about was  
10 that I wanted to make sure that it wasn't just the  
11 Finance and Audit Committee, because every member of  
12 this Board, as we move into the construction phase, I  
13 believe, has a duty to make sure that we are watching  
14 and looking for any trends that would lead to any sense  
15 of problems in terms of cost growth on this, and so  
16 therefore, we have structured this to ask the Finance  
17 and Audit Committee to keep the board completely  
18 apprised. And also, just as the CEO and I have  
19 discussed, anything that looks like a trend that's  
20 moving in the wrong direction would be immediate  
21 notification to the board.

22 So it's customary, except that it's more  
23 sophisticated, and we maintain, I think, I a very  
24 appropriate level of board governance over this issue,  
25 and I think those are points I'm willing to make, and



1 I'll just add one other postscript. A lot us up here  
2 have served on various boards and commission, and --  
3 like, Ms. Schenk was on the board commission, San Diego.  
4 I've been on the BART Board. Mr. Hartnett has been on  
5 the JPB and so forth. I have to say that we're  
6 fortunate that, while every member of this board brings  
7 things to the board, in this case, we have people with  
8 deep business experience. Mr. Rossi served as chief  
9 risk officer at Bank of America and was in charge of  
10 running the kind of sophisticated -- when you hear us  
11 talking about "Monte Carlo models," it's not that we're  
12 taking your money and going off to put it on the  
13 roulette wheel. A Monte Carlo model is a very  
14 sophisticated system of massive, multiple simulations of  
15 different scenarios to try to help one understand what  
16 special outcomes could be. Mr. Rossi ran those models  
17 at B of A. And Vice-Chair Richards, having work as a  
18 developer, has had to deal with practical issues on the  
19 ground of building things with contingencies and so  
20 forth. So we're fortunate, and I think the public is  
21 fortunate, that we have those kind of capabilities on  
22 the board at this point. So with that, I just wanted  
23 to, kind of, emphasize those points because this is --  
24 going back to something that Ms. Schenk raised earlier  
25 this morning, this is an item that's easily

1   misunderstood, and it's very important for you to  
2   understand correctly.

3           Vice-Chair Hartnett.

4           MR. HARTNETT: Thank you, Mr. Chair. Just  
5   three points. First, I'm very glad we're doing this.  
6   Second, it is also important to note that in our  
7   construction package, construction contract, and the  
8   design build contracts, there's an allocation of risks  
9   by contract, and so in a general sense, a contractor is  
10   allocated more risk than otherwise in the design build  
11   scenario, but there's a clear dividing line of  
12   allocation of risk, and I think that's another benefit  
13   that's in our overall scenario.

14          Lastly, on the board governance issue, I think  
15   that everything that Mr. Rossi and you have said, Chair,  
16   about the governance is really important to highlight.  
17   In my experience, having sat on probably more than ten  
18   boards, that the governance model we're using to monitor  
19   the risk and even in the adoption of the risk policy is  
20   extraordinary, and so I think that's right that it be  
21   extraordinary in our circumstances, but I think it is  
22   extraordinary, and I think it's important that we do it  
23   and that we keep doing it even as years down the line,  
24   as board membership changes and people's experience --  
25   people with different experience changes, it's really

1 important that we keep this governance structure in  
2 place so that whoever is sitting here, whatever board  
3 members, have the benefit of this same process and  
4 structure. So this is not a "here today, gone tomorrow"  
5 thing. I think for the life of the Authority as long as  
6 we're in the construction business, we'll have something  
7 as we're operating trains as well.

8 CHAIRMAN RICHARD: Thank you. Okay. With  
9 that, if there are no further questions, I'll ask for a  
10 motion for this item.

11 MR. RICHARDS: Move for approval.

12 MS. SCHENK: Second.

13 CHAIRMAN RICHARD: Okay. It's been moved by  
14 Vice-Chair Richards, and seconded by Ms. Schenk.

15 Would the secretary please call the roll.

16 MR. TAPPING: Thank you

17 MS. REED: Vice-Chair Richards.

18 MR. RICHARDS: Yes.

19 MS. REED: Vice-Chair Hartnett.

20 MR. HARTNETT: Yes.

21 MS. REED: Mr. Umberg.

22 MR. UMBERG: Yes.

23 MS. REED: Mr. Rossi.

24 MR. ROSSI: Aye.

25 MS. REED: Ms. Schenk.

1 MS. SCHENK: Yes.

2 MS. REED: Mr. Henning.

3 MR. HENNING: Yes.

4 MS. REED: Chairman Richard.

5 CHAIRMAN RICHARD: Yes. Thank you. Thank  
6 staff for that presentation, and I thank the public  
7 members who raised these questions. They're very  
8 important questions. I'm glad we had an opportunity to  
9 delve into this discussion.

10 With that, that completes the public portion of  
11 the agenda. The board will now enter into closed  
12 session to discuss matters of litigation, and we'll  
13 report back on any actions afterwards. Thank you.

14

15 (Whereupon the board entered into closed session.)

16

17 CHAIRMAN RICHARD: We'll be back in public  
18 session, and the board has completed its closed session  
19 with nothing to report. Thank you very much. With  
20 that, this meeting of the High-Speed Rail Authority is  
21 adjourned.

22

23 (Whereupon the meeting adjourned at 12:28 p.m.)

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1 I, Brittany Flores, a Certified Shorthand  
2 Reporter of the State of California, duly authorized to  
3 administer oaths, do hereby certify:

4 That the foregoing proceedings were taken before  
5 me at the time and place herein set forth; that any  
6 witnesses in the foregoing proceedings, prior to  
7 testifying, were duly sworn; that a record of the  
8 proceedings was made by me using machine shorthand which  
9 was thereafter transcribed under my direction; that the  
10 foregoing transcript is a true record of the testimony  
11 given.

12 Further, that if the foregoing pertains to the  
13 original transcript of a deposition in a Federal Case,  
14 before completion of the proceedings, review of the  
15 transcript ( ) was ( ) was not requested.

16 I further certify I am neither financially  
17 interested in the action nor a relative or employee of  
18 any attorney of party to this action.

19 IN WITNESS WHEREOF, I have this date subscribed  
20 my name.

21 Dated:

22 \_\_\_\_\_  
23

24 Brittany Flores CSR 13460  
25